

ICIAAELG1

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 CR 588 (ER)

5 AHMED MOHAMMED EL GAMMAL a/k/a
6 JIMMIE GAMMAL,

7 Defendants.

-----x

8 New York, N.Y.
9 December 18, 2018
10 3:00 p.m.

11 Before:

12 HON. EDGARDO RAMOS,

13 District Judge

14 APPEARANCES

15 GEOFFREY S. BERMAN

16 United States Attorney for the
17 Southern District of New York

18 NEGAR TEKIE

BRENDAN QUIGLEY

19 ANDREW DEFILIPPIS

Assistant United States Attorney

20 MEGAN BENETT

DONALD DUBOULAY

21 Attorneys for Defendant Gammal

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1 (Case called)

2 MS. TEKEI: Negar Tekei, Brendan Quigley and Andrew
3 DeFilippis, on behalf of the United States.

4 MS. BENETT: Good afternoon, Judge Ramos.

5 Megan Bennett and Don DuBoulay on behalf of our client,
6 Ahmed El Gammal.

7 And for the record, in the audience today are his
8 mother, his former spouse, as well as his former attorney from
9 the Federal Defenders office.

10 THE COURT: Good afternoon to you all.

11 This matter is on for sentencing and in preparation
12 for today's proceedings I reviewed the following:

13 I've reviewed the presentence report dated December 4,
14 2018, prepared by the U.S. Probation Officer Johnnie Kim which
15 includes a recommendation. I've also reviewed a sentencing
16 memorandum submitted by defense counsel, dated December 7 which
17 includes letters from Mr. El Gammal's family and friends;
18 videotaped interview of Mr. El Gammal' mother, along with a
19 translation; family photos; forensic evaluation of Mr. El
20 Gammal prepared by Dr. Michael First; information concerning a
21 recent history of Egypt; Mr. El Gammal's medical records from
22 the MDC; a certificate and performance appraisal of Mr. El
23 Gammal. And yesterday evening I received a letter from defense
24 counsel dated December 17 which includes some additional
25 photographs and additional certificate and performance

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1 appraisal and a letter from Ms. El Gammal's former
2 mother-in-law, Ms. Sherry Dubrow. To be honest I've been on
3 trial and I haven't had a chance to compare Ms. Dubrow's prior
4 letter and this current letter. Is there any difference?

5 MS. BENETT: There is one paragraph, I think it's the
6 penultimate paragraph in the letter submitted yesterday which
7 is at document 228-3 page three. That provides a little more
8 flavor about the ways that Mr. Gammal had helped her daughter.
9 That's 228-3 at page three.

10 THE COURT: OK. And I have reviewed the government's
11 submission dated December 13, 2018. Is there anything else
12 that I should have received or reviewed?

13 MS. BENETT: I just want to make sure that the first
14 exhibit to what I filed last night the Court has was Mr. El
15 Gammal's letter.

16 THE COURT: I do the Mr. El Gammal's letter, yes.

17 Anything else that I should have received?

18 MS. TEKEI: No. Thank you, your Honor.

19 THE COURT: I am taking the letter -- how do you go by
20 "Wolf Benett" or "Benett"?

21 MS. BENETT: "Benett" is fine.

22 THE COURT: Thank you.

23 Anything else that I should have received?

24 MS. BENETT: No, your Honor.

25 THE COURT: Let's talk about the sentencing

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1 guidelines.

2 Ms. Benett, do you continue to challenge the
3 imposition of the two enhancements?

4 MS. BENETT: We do. We believe that neither Section
5 3A1.4.2M, nor 2M5.3(b)(1) applied here. I think that to my
6 mind 2M5.3(b)(1) is an easier argument for the defense. And in
7 fact, the government's response on that point and I think
8 illustrates the problem of the application here. Specifically,
9 the -- sorry, not -- yeah, the 2M5.3(b)(1) two point
10 enhancement which requires that the offense include the
11 provision of dangerous weapons, firearms, explosives or funds
12 with the intent, knowledge and reason to believe that the funds
13 would be used to purchase those items or funds or material
14 support with intent knowledge or reason to believe.

15 THE COURT: Two requests. Can you slow down a little
16 bit and move the microphone closer to you.

17 MS. BENETT: Yes. So if the Court looks at
18 2M5.3(b)(1), there are five separate subsections. I don't
19 think there's any question that "A", "B", "C" and "D" were not
20 involved that were there was no provision of weapons, firearms
21 explosives or funds in this case. So then the question would
22 be whether under subsection "E" funds or other material support
23 provided the intent, knowledge or reason that they would be
24 used to commit a violent act. And certainly, I don't think we
25 need to re-litigate the trial but in summary the trial was

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1 about the facilitation of Samy El-Goarany's travel to Syria to
2 join the Islamic state. There was no testimony at trial
3 concerning whether Samy was known or expected to engage in a
4 specific violent act, whether Mr. El Gammal had any knowledge
5 that Samy would engage in a specific violent act. And just
6 don't think that there has been sufficient proof proffered to
7 warrant the application of that two-point enhancement.

8 THE COURT: Wasn't the government's theory -- and
9 obviously they'll speak to it -- wasn't the government's theory
10 that Mr. El Gammal facilitated el-Goarany's travel to Syria so
11 join ISIS and to fight with ISIS?

12 MS. BENETT: Our position is that the enhancement
13 doesn't apply merely for traveling and joining ISIS but rather,
14 there needs to be a specific intent on the part of the offender
15 to believe that the material support which is here helping Samy
16 el-Goarany, that that material support was going to be used for
17 a specific violent act, not merely joining in a foreign
18 terrorist organization but engaging in a violent act.
19 Otherwise, this would be wholly duplicative if the material
20 support, the provision of material support to join an FTO is
21 enough to warrant this two-point application there would be no
22 circumstance under which it would not apply when 3A1.4 also
23 applies. That is the nature of provision of material support.

24 THE COURT: So are you saying that it does not apply
25 unless Mr -- at lease in this case -- unless Mr. El Gammal

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1 facilitated Mr. el-Goarany's travel to join ISIS and
2 participate in a particular event, particular attack, bombing,
3 beheading, whatever, before this provision applies?

4 MS. BENETT: Well, the provision itself specifically
5 refers to the provision of the material support with the
6 intent, knowledge or constructive knowledge, reason to believe
7 that the material support would be used in the commission of a
8 violent act. It has to be used. The pertinent offender must
9 know and intend or have reason to know that the material
10 support would be used in the furtherance of a violent act.

11 So there is certainly testimony during the trial that
12 Samy had many reasons for traveling and joining ISIS and I
13 don't think there is any. We are not contesting, obviously,
14 that Samy was traveling to Syria in order to join the Islamic
15 state. But whether Mr. Gammal had knowledge that Samy intended
16 to engage in a particular violent act, the trial evidence
17 doesn't support the application of the guideline under the
18 clear language of the guideline. And it has to be more because
19 otherwise the sentencing commission has created separate
20 guidelines that apply to the exact same conduct.

21 THE COURT: I just want to understand the outlines of
22 your argument. So, are you saying that it's not enough, for
23 example, again, in this particular case, for Mr. El Gammal to
24 have facilitated the young man's travel even if Mr. El Gammal
25 knew not just that he was traveling to Syria to join ISIS but

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1 to fight with ISIS, to fight for ISIS, that would not be
2 enough?

3 MS. BENETT: I think that it would depend on what the
4 specific knowledge was about Samy el-Goarany's intent to be
5 engaged as an ISIS fighter and ISIL fighter.

6 THE COURT: And you are saying that there wasn't
7 sufficient evidence at trial to establish that Samy el-Goarany
8 went to Syria to become an ISIL fighter?

9 MS. BENETT: No. I think that you would have to have
10 that in joining the Islamic state, his intent was specifically
11 to engage in violent acts, not -- I think it's certainly
12 possible to be taking this out of the context of the Islamic
13 state or Syria it's certainly possible to join a militia of
14 some sort for a variety of reasons, one of which may be to
15 engage in an act of violence. And another may be to engage in
16 conduct that you believe is religiously mandated that you are
17 compelled to do because of your religious fate. And both of
18 those may get the person to the same place. They may cause
19 that person to join a militia that engages in violence but they
20 don't both show the same specific intents to engage in a
21 violent act.

22 THE COURT: OK. Ms. Tekei or Mr. DeFilippis.

23 MR. DEFILIPPIS: Yes, your Honor. So I think the
24 defense is mistaken both on the legal requirements and on the
25 factual application of the proof at trial to the sentencing

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1 guideline.

2 First on the legal requirement, the Fourth Circuit
3 which is we think persuasive authority here has said
4 specifically, that this guidelines revision does not require
5 that support be traced to or designed to lead to a specific act
6 of violence but rather that the defendant be shown to have
7 intended, known or had reason to believe that their support
8 would be used to assist in acts of violence by the terrorist
9 organization. And that case, your Honor, which is United
10 States v. Dirany 896 F.3d 295 involved in fact someone who was
11 not a fighter at all but provided funds to a terrorist
12 organization with the intent to those funds go towards its
13 military activities.

14 So I think as a baseline, your Honor, there is no feed
15 to prove a direct causal link, a direct knowledge of the
16 precise act of violence in which the individual is to engage
17 in.

18 But turning to the facts of this case, I think that
19 threshold is clearly met here for a number of reasons. First,
20 Mr. El Gammal certainly knew that Mr. el-Goarany was going to
21 join ISIS. He knew that he was going to do so in Syria which
22 is a war zone. And he knew that he was going to do so in order
23 to be fighter. That is the only reason why young men from
24 around the world were at this time flocking to Syria to join
25 ISIS.

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1 And it's completely consistent, your Honor, with the
2 proof of what he did when he actually got there. We saw a
3 video of him in military fatigues. We saw a photograph of him
4 with a semiautomatic firearm. And we heard from an expert,
5 Mr. Zellen testified that all ISIS members upon arriving in
6 Syria receive religious indoctrination and military training.

7 So the entire purpose of this conspiracy, the
8 conspiracy both to provide material support and for Mr. El
9 Gammal to receive military training were geared towards his
10 ability and his desire to engage in acts of violence.

11 And I think the millitary training count is
12 particularly relevant there, your Honor, because if we concede
13 as we must that the jury found Mr. El Gammal guilty on that
14 count again, the entire object of that conspiracy was for
15 Mr. el-Goarany to join ISIS as a fighter and as a fighter the
16 entire purpose is to carry out acts of violence for ISIS.

17 THE COURT: Does it matter whether he's joining an
18 ISIS army, if you will, in order to defend territory or to take
19 territory?

20 MR. DEFILIPPIS: No, your Honor. ISIS' aims are
21 twofold. In that regard they do intend to defend their
22 Caliphate but they also have expansionist vision. So they've
23 called for the toppling of governments in the Middle East and
24 attacks on western countries who oppose their policies.

25 So the guidelines provision imposes no specificity on

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1 the type violence. It simply says an act of violence. And so
2 whether Mr. el-Goarany intended to fight to preserve the
3 Caliphate or to expand it, he would still fall squarely within
4 the guidelines provision there.

5 And I would note that this was all confirmed to be a
6 part of the conspiracy and the defendants' plan when they
7 exchanged private messages over social media upon his arrival
8 there. And after reporting home to his brother that he
9 received military training after producing a photograph of
10 himself with a firearm, he told Mr. El Gammal that everything
11 was going, quote, according to plan.

12 And so that, your Honor, counsel's strongly in favor
13 of a conclusion certainly by a preponderance of the evidence
14 that the plan was for Mr. el-Goarany to train and fight as an
15 ISIS fighter. And of course the jury saw and we all saw on his
16 martyrdom letter which was the culmination of that plan when he
17 died fighting for the Islamic state.

18 I would note, your Honor, although we didn't have this
19 in our submission, our principle theory for the applicability
20 of this provision is the act of violence sub provision. But I
21 think the government would also contend that the dangerous
22 weapons or firearms or explosives provisions also are
23 applicable here because the language of the provision does not
24 require that the defendant provide such items to Mr. El Gammal.
25 It simply states that it involved the provision of such items.

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1 And here upon his arrival in Syria, Mr. El Gammal did
2 receive a firearm. There's a photograph of that. He received
3 military training. So while it's not the government's primary
4 argument, I think also, your Honor, by a preponderance the
5 offense did involve the provision of one or more of those
6 materials.

7 So I think this case falls squarely, your Honor, in
8 the are heartland of what this provision was seeking to punish
9 which is when someone goes and commits an act of terrorist
10 violence with the assistance of another person and that's
11 reasonably foreseeable to the defendant, the provision applies.

12 THE COURT: And as I recall -- and correct me if I'm
13 wrong -- the testimony at trial by at lease the expert, if not
14 others, was that at this point in time I had already declared
15 war, if you will.

16 MR. DEFILIPPIS: You had, your Honor.

17 THE COURT: Very well. I do find that this
18 enhancement is applicable. Each subsection -- I don't think we
19 need to get into the others -- says that funds or other
20 material support or resources would be intent, knowledge or
21 reason to believe that they are to be used to commit or assist
22 in the commission of a violent act requires a two level
23 enhancement.

24 Certainly, my view is of the case at trial could be
25 established easily by a preponderance of the evidence was that

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1 Mr. El Gammal engaged in this activity with Mr. el-Goarany
2 knowing that Mr. el-Goarany was very incentivized to travel to
3 Syria in order to fight, to become a fighter with ISIL, an
4 organization that has been deemed to be a foreign terrorist
5 organization, an organization that had declared war against the
6 United States and others and that Mr. El Gammal knew that
7 Mr. el-Goarany was going to willingly engage in acts of
8 violence. And so, I do find that by at least certainly a
9 preponderance of the evidence the enhancement applies.

10 Ms. Benett.

11 MS. BENETT: That's obviously over defense's objection
12 to the application.

13 THE COURT: Please keep your voice up.

14 MS. BENETT: Moving onto 3A1.4, as we set forth in our
15 sentencing memo the government presented a theory to the jury
16 that had not been argued during their summation that the jury
17 did not need to find that Mr. Gammal had actual knowledge
18 following the dispute between the parties over the conscious
19 avoidance instruction, relied heavily on the conscious
20 avoidance instruction in their summation to the jury in support
21 of their argument that Mr. El Gammal had reason to know. Even
22 if he individually, if there was not sufficient direct evidence
23 of his actual knowledge, given the universe of information that
24 was around him, he would have had to be consciously avoiding
25 and understanding what Samy's -- there was all the testimony

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1 about Samy's disassembling about going for humanitarian
2 purposes or going to volunteer at the border with refugees came
3 out during trial. He told that to family members. He told
4 that to his friends. And the government's theory in response
5 to that was, well, you'd have to be consciously avoiding Samy's
6 true purpose in order to embrace this humanitarian motivation
7 for his travel.

8 The terrorism guideline, the Second Circuit has held
9 that 3A1.4 requires some intent that the defendant's conduct
10 was calculated to influence or affect the conduct of that
11 government and that that required, that must require, that
12 necessarily must require more than conscious avoidance. Since
13 I would say that our primary argument on this enhancement is
14 that there is an expressed conflict between the conscious
15 avoidance evidence here and the scienter requirement of the
16 terrorism enhancement.

17 THE COURT: Mr. DeFilippis.

18 MR. DEFILIPPIS: Your Honor, again, we disagree with
19 the defense on both fronts.

20 First, as to the legal requirement, courts including
21 the Second Circuit and in United States v. Reyes 302 F.3d 48,
22 have made clear deliberate ignorance or what's commonly called
23 conscious avoidance and positive knowledge are equally
24 culpable. So in other words, just because someone knows of the
25 objective of a conspiracy but simply avoids confirming it by

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1 refusing to ask a precise question or learn a precise fact,
2 those are under the law equally culpable.

3 And it's for that reason that all of the circuits have
4 also said that a willful blindness instruction is and should be
5 applied in appropriate cases where the legal requirements are
6 for a finding ever specific intent, the statute that have
7 heightened intent requirements.

8 So we think both of those well settled principles of
9 law make it clear here, your Honor, that just because the
10 guidelines provision requires intent that the act be geared
11 towards affecting the conduct of a government or retaliating
12 against government conduct, legally seeking under those
13 principles the application of willful blindness instruction
14 makes no difference, whatsoever.

15 I would note factually, your Honor, that here, we
16 think certainly well beyond a preponderance the evidence at
17 trial proved that Mr. El Gammal knew full well what
18 Mr. el-Goarany was doing, as your Honor I think just found with
19 regard to the other provision. But more importantly both
20 Mr. El Gammal and Mr. el-Goarany were very much geared towards
21 and expressed on numerous occasions their personal desires to
22 affect the government conduct and retaliate for government
23 conduct.

24 So the defendant's Facebook and social media postings
25 had all kinds of statements about his desire to punish the

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1 Egyptians for ISIS to take over Egypt and Saudi Arabia and
2 Jordan. And by the same token, Mr. el-Goarany announced after
3 arriving was that the reason he was there was for the Egyptians
4 conduct at Rabaa Square, which was the uprising in 2014.

5 So this, perhaps, more in other ISIS or material
6 support cases, the conduct of the defendant was motivated
7 clearly and manifestly by a desire to affect and retaliate for
8 government conduct. Now the fact that the jury was instructed
9 that had he simply put his head in the sand in terms of having
10 Mr. el-Goarany tell him specifically he was going to fight ISIS
11 or using those precise words, it makes no difference legally as
12 to his guilty or as to the applicability of the provision.

13 THE COURT: Thank you.

14 Anything else, Ms. Benett?

15 MS. BENETT: No.

16 THE COURT: I find that this provision also applies.
17 3A1.4 indicates that if the offense is a felony that involved
18 or was intended to promote a federal crime of terrorism, a 12
19 level enhancement is permitted.

20 I do find that the fact that the government relied on
21 a theory of willful blindness, used as a proxy for the intent
22 requirement is of no legal moment, as Mr. DeFilippis has
23 indicated, and the facts at the trial, as I recall them, and as
24 are set forth in the government's submission and by
25 Mr. DeFilippis here this afternoon, do indicate that certainly

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1 Mr. El Gammal was very motivated. He was interested in what
2 was going on in Egypt and could be upset about the situation in
3 Egypt and very desirous to do something.

4 And Mr. Samy el-Goarany also indicated that he was
5 motivated in large part by the events at Rabaa Square and
6 therefore, joined Ishola in order to help because at least if
7 in large part because of that. So I do think that that clearly
8 evinces an intent to promote the crime of terrorism and
9 therefore, I think that it does apply.

10 Anything else with respect to the guideline
11 calculation, Ms. Benett?

12 MS. BENETT: No, your Honor.

13 THE COURT: Very well. Therefore, I find, although I
14 am not required to find to sentence of Mr. el-Goarany within
15 the guidelines. I do find that the base level is 26 to which
16 two levels are added because of his knowledge that his
17 participation would result in an act of violence and 12 levels
18 because the offense was intended to promote terrorism yielding
19 a total offense level of 40. Because he has a criminal history
20 category one the guidelines range is 292 to 365 months.

21 Let me, Ms. Benett, ask you, have you read the
22 presentence report and discussed it with Mr. El Gammal?

23 MS. BENETT: I have and we have, your Honor.

24 THE COURT: Mr. El Gammal, have you received a copy of
25 the presentence report and discussed it with your attorneys?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Are there any other objections concerning
3 its factual advocacy?

4 MS. BENETT: With respect to -- so I did append to the
5 sentencing memo as Exhibit A the objections that we had
6 provided to Mr. Kim, some of which he incorporated. I don't
7 think that any of them would affect anything like a designation
8 determination or a security level classification. So I don't
9 think it's necessary to address them here. But I did have
10 objections generally to the factual narrative in the PSR which
11 are Exhibit A to our opening memo.

12 THE COURT: I do note that the government has
13 indicated in its submission that it does not object to the
14 change in language where the PSR talks about the agent believes
15 to as what is established at trial so the parties can submit to
16 me precisely what those paragraphs are. I'd be happy to make
17 these changes.

18 MS. BENETT: Thank you.

19 THE COURT: OK. Does government wish to be heard
20 concerning sentencing?

21 MS. TEKEI: Yes, your Honor.

22 As the Court is familiar with the facts of this case
23 having presided over the trial, we will be brief.

24 Your Honor, the defendant provided material support to
25 ISIS and he aided and abetted the receipt of military-type

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1 training from ISIS. When he committed these crimes, ISIS was a
2 terrorist organization that, as the Court has acknowledged, had
3 already declared itself at war with the United States, a
4 terrorist organization that the defendants wholeheartedly
5 supported and advocated. He knew about their barbaric methods.
6 He understood that ISIS was waging jihad and he was a proud
7 ISIS supporter.

8 The defendant also knew that ISIS needed an army to
9 succeed, an Army of people and that ISIS needed foreign
10 fighters to join its ranks. But in the fall of 2014, the
11 defendant was not yet prepared, himself, to join ISIS.
12 Instead, he supported ISIS' jihadi efforts by supplying ISIS
13 with Samy el Goarany. With the defendant's help el Goarany
14 traveled to Syria, joined ISIS, trained in how to wage war with
15 ISIS and then died waging war for ISIS.

16 The defendant assisted el Goarany and encouraged him
17 every step of the way. The defendant knew what el-Goarany was
18 doing was wrong. He knew that what he himself was doing was
19 wrong and the defendant even tried to cover his tracks.

20 THE COURT: I think, Ms. Tekei, that you don't dispute
21 that the point that the defense makes that Mr. el-Goarany
22 himself was set on traveling to Syria and joining ISIS and
23 therefore, Mr. El Gammal's role is not as significant as it
24 otherwise might be if, for example, it was he who recruited and
25 planted the seed in el-Goarany head to do this.

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1 MS. TEKEI: We do dispute that, your Honor. And
2 Mr. El Gammal was involved with el-Goarany's travel every step
3 of the way. He flew -- let's pack up for a moment.

4 Samy al Goarany realized that Mr. El Gammal was an
5 ISIS supporter and immediately that day, the person who he
6 reached out to was Mr. El Gammal. Then in ensuing
7 communications via Facebook and encrypted communication, they
8 engaged in a discussion about precisely that shared interest.
9 At the end of that discussion it was Mr. El Gammal who sent
10 Samy el-Goarany a link to an ISIS documentary that described
11 the way ISIS trains its members, religious training and
12 military-type training.

13 Then Mr. El Gammal flew from Arizona to New York City
14 and he met repeatedly with Samy al Goarany throughout the
15 course of that trip. During that trip Mr. El Gammal and
16 Mr. el-Goarany discussed the plan. We know this because Mr. El
17 Gammal then in ensuing communications with the Turkish based
18 facilitator and told him that he had in sum vetted el-Goarany
19 and that they were to help el-Goarany achieve his desired goal,
20 that is to join ISIS.

21 THE COURT: Yeah, but that's the point, right? It was
22 Mr. el-Goarany's desired goal. During that trip to New York
23 Mr. El Gammal did not push him into doing this or try to
24 convince him into doing this. Mr. el-Goarany was all in even
25 before the time that he met Mr. El Gammal.

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1 MS. TEKEI: Your Honor, I don't think we would agree
2 with that and here is why. It was only after that meeting with
3 Mr. El Gammal that Mr. el Goarany took the steps towards
4 purchasing a plan ticket to Istanbul, for example. He
5 immediately communicated with none other than Mr. El Gammal
6 right after he had purchased those plane tickets. When he
7 canceled those plans he told El Gammal. When he made those
8 plans again he told El Gammal. He kept Mr. El Gammal apprized
9 the whole way through and he knew when he traveled to Istanbul
10 he knew that he would have a contact upon arrival. And in fact
11 one of the first people he contacted was Atia Alwalla, Mr. El
12 Gammal's friend and associate who was part of this conspiracy.

13 So while I think we all agree that Sammy el-Goarany
14 was interested in ISIS, supported ISIS, had a desire to join
15 ISIS, we don't think that that diminishes Mr. El Gammal's role
16 in getting him there. In fact, Mr. El Gammal played a detailed
17 role every step of the way.

18 Your Honor, we'll just add, it's no accident that when
19 Samy el-Goarany arrived in ISIS territory he tweeted that the
20 reason why he was there was because of what had happened in
21 Rabaa Square. That is the link. That is the shared ideology.
22 Those were the shared reasons, the reason that he shared with
23 Mr. El Gammal for their joint support of ISIS.

24 Your Honor, it is because of the seriousness of Mr. El
25 Gammal's crimes and the sentences imposed on defendants

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1 convicted after trial of engaging in similar conduct that the
2 government submits a sentence within the guideline range would
3 be appropriate in this case.

4 And we'll add, your Honor, that we submit the Court
5 should impose a sentence on Count Three and that such a
6 sentence should be the mandatory ten-year term of imprisonment.

7 THE COURT: That's a curious statute. I've not had
8 occasion to apply it before. So I can fine him a hundred
9 dollars on this count or sentence him to a term of imprisonment
10 but if it's imprisonment it has to be ten years?

11 MS. TEKEI: Yes, your Honor, that's what the plain
12 language of the statute says.

13 Your Honor, the reason why we're asking for an
14 incarceratory sentence on that count which would necessarily
15 mean a ten-year term of imprisonment is because it would be
16 appropriately punish Mr. El Gammal for aiding and abetting al
17 Goarany's receipt of military-type training from ISIS.

18 That conduct which we've already discussed length
19 today is at the core of the defendant's crimes. It resulted in
20 a unique harm beyond the defendant's other actions in providing
21 material support to ISIS. It resulted in a trained ISIS
22 fighter who fought against ISIS' enemies, among them the United
23 States and who died as a result.

24 The defendant's request for a monetary sentence, a
25 fine, which since the defendant doesn't have an ability to pay

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1 that fine is basically a request for no sentence at all on
2 count three. And we submit that that's just not adequate to
3 adequately punish the defendant for aiding and abetting what he
4 did, aiding and abetting al Goarany's travel to Syria to join
5 ISIS and fight with ISIS to receive military-type training from
6 ISIS.

7 We think the Court should impose a ten year mandatory
8 sentence

9 THE COURT: Thank you.

10 By the way, that's not required to be imposed
11 consecutively to any other sentence?

12 MS. TEKEI: That's correct, your Honor. It can be
13 concurrent.

14 THE COURT: Thank you.

15 Ms. Benett.

16 MS. BENETT: Thank you, your Honor.

17 Instead of addressing the government's points right
18 now I'd like to just turn our attention to Section 3553(a)
19 subsection (1), which is as the Court knows sets forth two, I
20 think the phrasing, two equally important considerations when
21 fashioning a sentence. One is the nature of the offense. And
22 the other was the history and the characteristics of Jammie
23 Gammal.

24 The government spoke and wrote not at all about
25 Mr. Gammal outside of the facts of this case. And I think that

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Sentence

1 though I know we put in a lengthy sentencing submission with
2 many exhibits, it's important to put on the record here some of
3 the history and characteristics of Mr. Gammal beyond the
4 offense conduct that we're talking about.

5 He is a 46-year-old man who has four decades of
6 history that don't involve this type of offense conduct. And
7 in thinking about what is what I would say the Court's duty to
8 impose a minimum necessary sentence to comply with the
9 parsimony of a sentence sufficient but not greater than
10 necessary, which would mean the minimum sentence that can
11 satisfy the federal sentencing regime's goals, I would ask the
12 Court to step away from the guideline calculations here and
13 consider and step away briefly from the nature of the offense
14 and try to think of what it would impose on -- what sentence it
15 would impose on this case given who Mr. Gammal is, given the
16 goals of the sentencing regime, to promote specific deterrence,
17 to protect the public, to promote respect for the law and to
18 take into consideration Mr. Gammal's history and
19 characteristics.

20 If this terrorism guideline enhancement applies here,
21 this would be a base offense level of 26 with a guideline range
22 of 63 to 78 months. And I think the question has to be if the
23 offense conduct that factors into those two enhancements
24 sufficiently severe that this Court believes that it is the
25 minimum necessary sentence to go from 63 to 292 months to

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Sentence

1 adequately punish to take into consideration -- well, 292 is
2 the bottom of the guideline range the government is seeking the
3 Court, is asking the Court to apply here.

4 THE COURT: Right. But the 63 may be the and
5 inappropriate anchor assuming that the third count that I
6 impose a sentence of incarceration on the third count that's
7 120 months, correct?

8 MS. BENETT: I don't think the Court should be driven
9 by the statutory minimum term of imprisonment on Count Three
10 because we have Congress's intent on Count Three is clearly
11 expressed in the statute. No matter what the government's
12 position is about the seriousness of the receipt of military
13 training, Congress has told us that a fine is an adequate
14 punishment in that case. The elected representatives
15 representing the interests of the American people have said a
16 fine is an adequate punishment in that case. I think it's a
17 strange statute but it is and Congress has spoken as to what is
18 an adequate punishment for Counts Three and that is a fine or a
19 ten year term of imprisonment.

20 U.S. against Dean the Supreme Court address whether or
21 not it was appropriate for a sentencing court to bottom out a
22 predicate crime when there was a mandatory minimum on a 924(C)
23 charge. And in Dean the supreme court held that it was an
24 appropriate consideration that you could look at the whole
25 universe of sentencing exposure and that just because you

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Sentence

1 bottom out. I think it was a Hobbs Act robbery. You could
2 bottom out of that Hobbs Act robbery if you felt the 84 months
3 that were going to be mandatorily imposed on the 924(C), I
4 believe it was a brandishing but it may have been a discharge
5 case.

6 But in any event, the sentencing court had decided
7 that the sentence on one count was sufficient to punish for
8 both of the crimes. And so I would say under Dean, this Court
9 certainly is empowered to fashion a sentence collectively that
10 can include a fine on Count Three and a term of incarceration
11 on the other charges that punishes Mr. Gammal and that takes
12 into consideration his history and characteristics that will
13 promote respect for the law, that will protect the public and
14 that will avoid uncharged disparities. And I will get to that
15 in a moment but I think it's reallying instructive here that
16 the government never addressed the two most comparable
17 facilitation cases from district courts recently. The Kahn
18 case which has facts that are strikingly similar to the case
19 here and the case out of the Northern District of California.

20 So just to address the Court's question about the
21 military training count, the Court need not impose a sentence
22 of incarceration in court in order to satisfy the rule of
23 federal sentencing regime as the whole sentence. That should
24 be considered here and the whole sentence need not be 121
25 months if the federal sentencing regime concerns can be

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Sentence

1 satisfied with a sentence below 120 months it's especially
2 incumbent that the sentence be lower than 120 months because
3 that's what the parsimony clause is. So I'd like to turn a
4 little bit to Mr. Gammal's history and characteristics.

5 The government argued in their memo that because
6 Mr. Gammal is a U.S. citizen that is somehow an aggravating
7 factor because he will not be removed from the country which I
8 think ignores a really important part of who he is.

9 Ahmed Gammal, Jammie Gammal, was born in Cairo, raised
10 by his mother who is here today, his father, along with his
11 sister. He was raised in a professional middle class
12 household. He went to university. He was employed in a small
13 bank in Cairo. He had a comfortable life but he hungered for
14 something that was his own and longed to join the life that he
15 saw portrayed in popular media and heard about from friends in
16 the United States. And as his friend Tamer writes:

17 Jam left Cairo with a very small bag and very big
18 plans and he left a comfortable job and he left his family and
19 he came here in the 1990s make a life for himself. And when he
20 came here he was working, as Cheri Dubrow described in her
21 letter, working as an attendant at a convenience store. He
22 started from the bottom. He started there and he worked his
23 way up. He became a salesperson at a Ford dealership. He had
24 a successful practice at the Ford dealership in Pasadena and he
25 was rewarded by his employers for his performance. He had

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Sentence

1 friends in California. He had a job and he met the woman who
2 would become his wife Celest.

3 And as the Court knows from the sentencing
4 submissions, that relationship was not easy. But Jam was a man
5 who always put his family first. And when Celest said that it
6 was important to her to move to Arizona where her mother Sherry
7 had moved the year before, Jam was faced with the decision
8 about leaving the life that he had built, the life he dreamt of
9 when he left Cairo and the life that he created for himself in
10 Pasadena giving that up to follow Celest. And he made that
11 choice to go with Celest because at that time in Celest's life
12 it was critically important for her wellbeing that she have a
13 home near her mother and away from California.

14 THE COURT: Didn't he also want to get away from the
15 casinos in California?

16 MS. BENETT: It was, it factored into his decision
17 making but of course, when he was in Arizona there was access
18 to gambling as well. And was not the primary motivating
19 factor. As Cherie writes to the Court, Jam has always remained
20 by Celest's side even when Cherie -- this is in the letter
21 submitted yesterday -- even when Cherie wasn't able to or
22 Celest, Jam was there. So there may have been reasons that he
23 believed it was the right decision for him as well but it was a
24 decision that was motivated almost entirely by his concern for
25 Celest and his desire to support her and to be there as her

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Sentence

1 partner.

2 When he got there he worked at an auto dealership in
3 Arizona as well. So Celest writes, he would spend free time
4 with her grandmother in the nursing home with the other elderly
5 residents there. They were engaged in habitat for humanity.
6 He continued to provide Celest the critical support that she
7 described in her letter as she was struggling with her own
8 problems.

9 He continued to experience some professional success
10 but much as the young man in Cairo, he longed for something
11 more and his mother-in-law, Cherie, offered to help fund, as
12 did his friend Tamer in Cairo, helped fund his small business
13 with Cars Are Us, the automobile business, which he built from
14 nothing to the point where he was employing up to six people at
15 the time of his arrest.

16 He continued to be a man with big dreams. And I think
17 that the government's position is sort of -- application of the
18 guidelines enhancement here about consideration of all of those
19 parts of who he was just shows how superficial the
20 recommendation of a 292 month sentence is in this case.

21 I think the difficult question I have to imagine, the
22 difficult question for the Court is to figure out how the
23 offense conduct could happen, how somebody who is so
24 differently situated from a typical terrorism defendant, the
25 government has said, well, there's no proof that he -- that's

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Sentence

1 simply not true. He's been at MCC for nearly four years in an
2 environment which this prosecution team knows well has read
3 radical behavior. He's been involved in none of that. He is
4 on the floor where religious services take place, on the floor
5 where some of the dissemination of radical publications take
6 place. He's been involved in none of that. He has kept to
7 himself. He has stayed quiet. He's been the victim of an
8 assault at the MCC.

9 The government says in response to our argument that
10 there should be some sentencing credit for the conditions of
11 his confinement that we haven't offered anything specific to
12 Mr. Gammal that's not applicable to everybody at the MCC.
13 That's just not true. He was assaulted and put in segregated
14 housing for almost a month while the assault was investigated.
15 He had nothing to do with it. He had to be put in the
16 segregated housing unit while the correctional staff
17 investigated the incident.

18 THE COURT: But there was nothing remarkable about the
19 incident other than a garden variety at the assault, right, at
20 MCC? He wasn't assaulted because of who he was or --

21 MS. BENETT: I would say that anybody -- I don't think
22 it should be expected that any inmate at MCC IS going to be the
23 victim of an assault. So was he targeted because he is and
24 older man? Was he targeted because he was -- I don't believe
25 he was targeted because -- I think somebody felt like he had

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Sentence

1 spilled something in the kitchen on him. But the point is that
2 he was in the segregated housing unit during the course of the
3 investigation without any behavioral justification for his
4 segregation. Most people who have spent time in the SHU are
5 there because they engaged in some sort of misconduct. He did
6 not. And his treatment has been delayed repeatedly, as
7 described in the Bureau of Prisons records that we submitted.
8 Almost on a monthly basis he's supposed to have medical
9 treatment and gets deferred because they don't have the staff
10 to get him from Point A to Point B for purposes of treatment.
11 So it's that specific to Gammal. It's to him in that he
12 specifically suffered that injury at the hands of a different
13 inmate.

14 Additional conditions of his confinement, not
15 everybody is in the same unit that he is in. He is on Five
16 North which is where the inmates in that unit have
17 additional -- their ability to access a library, have visits,
18 to use the phone because of the use of Five North for religious
19 purposes. So their movement is more confined on Five North
20 than it would be in other places.

21 Despite this he has been really been an exemplary
22 inmate and his lack of any sort of meaningful disciplinary
23 record is important consideration for this court to take into
24 account when thinking about sort of specific deterrent when
25 protecting the public.

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Sentence

1 Is Mr. Gammal likely to reoffend? Well, there is
2 proof here he is not. Other people convicted of terrorism
3 cases, as Judge Weinstein opined in the case of U.S. against --
4 in the Eastern District this August. These facilities breed
5 radicalization for terrorism defendants, incarceration can be
6 an exacerbating factor and they're likely to reoffend.

7 We have empirical evidence here for three and a half
8 years Mr. Gammal has been in that environment and has not been
9 engaged in any of the behavior that we've seen in other
10 similarly situated cases. That's meaningful because that's
11 proof that upon his release or it should be provided some
12 assurance to the Court upon his release, he is not likely -- if
13 he is not going to be radicalized at the MCC for three and a
14 half years where he is surrounded by other terrorism
15 defendants, he is not going to be radicalized upon his release.

16 His performance, I was about this today. He had
17 sought for some long period of time to participate in that. It
18 was difficult because of where he is housed. He had requested
19 to be moved in order to participate in that program. It took
20 quite some time till that program was hiring and as soon as it
21 was he was placed in an inmate companion program. And I think
22 it is similar to what Mr. Gammal did when he first arrived in
23 Arizona. He sat with Celest's grandmother. He sat with other
24 elderly residents at the nursing home. He is sitting with
25 inmates who are having suicidal thoughts. He is sitting with

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Sentence

1 inmates who need psychological -- he is there in active
2 generosity in an effort to provide for those people around him
3 some measure of comfort. This isn't something that he has done
4 simply because he is at the MCC. AND he know that because he
5 did it when he was in Arizona with Celest's grandmother. He
6 and Celest did this with their habitat for Humanity work. His
7 friend from Cairo commented on the generosity and spirit that
8 he showed to his friends and to his family and to his
9 charitable acts.

10 So none of this is addressed by the sentencing
11 guidelines. The sentencing guidelines as I believe it was the
12 judge in the Colorado case noted terrorism guidelines is sort
13 of takes a recking ball at the sentencing regime. And the
14 reason that I started out with the 63 to 78 months -- and the
15 Court's right. It's not a perfect anchor here. But I am not
16 sure what is because the offense enhancement is so dramatic
17 that it's hard to know how that guideline could adequately take
18 into consideration the statutory sentencing factors. To go
19 from 63 months to 292 months on the basis of the -- I'm not
20 sure that there could be any material support case that would
21 get the 26 months, that would get 26 level, the level 26 base
22 offense level. It seems from the government's argument that
23 any meaningful provision of material support necessarily is
24 going to trigger at 12 point enhancement under 3A1.4. So
25 that's why I bring up the 63 month guideline range for an

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Sentence

1 offense level of 26 because it's really important to take a
2 step back from that 40, that level 40 offense level and 292
3 month starting place. And when you look at 292 versus the 63,
4 I think the question then has to become, is that additional 229
5 month sentence the bear minimum necessary to satisfy the
6 federal sentencing regime's goals. I just don't think there's
7 any principled argument that it is.

8 I'd like to briefly address the government's -- I
9 don't know that I need to say much about the offense conduct
10 here. I think the Court saw the trial evidence. I think we
11 have detailed what believe was the conduct of Samy el-Goarany
12 predating his relationship with Mr. Gammal where he was
13 demonstrating his interest joining ISIS, supporting ISIS.

14 Certainly, the Court knows that Samy's brother and
15 cousin who were involved in some capacity with facilitating,
16 certainly facilitating Samy's evasion of apprehension if not
17 also in the face of facilitating his travel to ISIS, the
18 government deemed and -- case it's sufficient to provide him
19 with the non prosecution agreement. I think the question
20 really is does the guidelines range here which is what the
21 government is seeking, does that 292 month sentence adequately
22 take into account the statutory sentencing factors? Does that
23 delta between 63 months at a level 26 and 292 at a level 40, is
24 that additional 229 months the minimum necessary to satisfy the
25 federal sentencing regime. I think it is not. We ask the

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Sentence

1 Court for a 48 month sentence in the case. We recognize that
2 that's a substantial variance from the 292 months. It's not a
3 substantial variance from the base offense level of 26.

4 We believe it does adequately take into account the
5 federal sentencing regime's concerns.

6 THE COURT: Why is this case so much like Kahn?
7 You've indicated that Kahn, I believe, the defendant got an 18
8 month sentence.

9 MS. BENETT: Kahn was a facilitator. The government's
10 comparables I don't think they put in a facilitator cases.
11 Even the sentences that they argued in their sentencing
12 submissions were all direct actor cases. There is a case in
13 upstate New York. That was the guy who went out and was buying
14 knives and machetes and planning a video attack. He got a
15 sentence less than the government is recommending here.

16 The Sadocfatov case in the Eastern District involved
17 direct plans on traveling and had direct threats. He got an
18 180 month case. 112 months less than the government's arguing
19 for here.

20 The Alsaday case in New Jersey which involved a long
21 period of contact, planning to get to Syria or working with
22 other people who are getting to Syria, he got 180 month
23 sentence, 112 months less than the government is asking for
24 here.

25 The government didn't address Kahn or Nachay, the

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Sentence

1 California case. Those are both facilitator cases. Kahn got
2 18 months. Nachay got 60 months. Kahn was a young man who
3 traveled from, he was in Australia. He went to Turkey. He was
4 attempting to go to Syria. Came back to the United States.
5 Then provided assistance in getting a friend of his from, he
6 came back to Texas and helped his friend travel to Syria. His
7 friend got to Turkey. Goes over the border into Syria and
8 kills in Syria. that's why I would say that is one of the most
9 comparable and strikingly similar fact patterns here.

10 (Continued on next page)

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ICISL2

1 MS. BENETT: The government's response to that is,
2 well, he was young and he pled guilty. So I think to add the
3 three-point enhancement for not accepting responsibility and
4 having gone to trial, that still doesn't explain to me how you
5 can go from 18 months and add 274 months on top of that, and
6 argue that somehow Mr. Gammal is not being treated unreasonably
7 differently. The Natsheh case was another facilitator case in
8 California where the defendant was planning to travel,
9 purchased a ticket, and purchased the ticket for a minor to go
10 to Turkey and cross into Syria, and he got a 60-month sentence.
11 So that was both facilitator and a direct actor case and he
12 accepted a 60-month sentence.

13 I don't believe that the government's case that they
14 presented are truly comparable here. They are filter cases.
15 There is a big difference -- I believe I put in a reference to
16 the Fordham University Center of securities analysis of
17 distinction between facilitator Cases and direct actor, active
18 violence cases. So the government's argument is this was an
19 incredibly serious case because it was a terrorism case. It
20 was a terrorism case and it is a serious case, but not all
21 terrorism cases are the same.

22 Their argument of the 292-month sentence is that
23 Mr. Gammal is the same as the person who was acting violently
24 in the U.S., same as the person who traveled to join ISIS
25 himself. I think it is important to distinguish the

ICISL2

1 facilitator from the other cases. Khan and Natsheh, I think,
2 are the fact patterns that are most comparable to the offense
3 conduct here.

4 Could I make one final point?

5 THE COURT: Sure.

6 MS. BENETT: Does the court have any other questions?

7 THE COURT: Not at the moment.

8 MS. BENETT: I am going to talk briefly about general
9 deterrence and just punishment, which are promoting respect for
10 the law, which are, of course, statutory concerns set forth in
11 3553(a). I didn't hear a lot about it from the government, but
12 I do want to note -- I didn't address this in my sentencing
13 memo -- to the extent the court is concerned about the general
14 deterrence and sending a message, there is a whole body of
15 social science research that we have seen in the last five to
16 ten years that Daniel Nagin, in a publication in 2013 by
17 University of Chicago Press, that had sort of a longitudinal
18 analysis of the effects of long sentences. His conclusion was
19 that the evidence in support of the general deterrent effect of
20 the certainty of punishment is far more consistent than for the
21 severity of punishment, and that long prison sentences cannot
22 be justified by a theory of general deterrence.

23 THE COURT: I am familiar with that body of knowledge.
24 The statute has still not been amended.

25 MS. BENETT: Well, I don't think it needs to be

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1 amended. I think it can be satisfied by imposition, by the
2 certainty of the imposition of a shorter incarceration.

3 I just want to sort of finish with the issue of just
4 punishment, which seems, to me, a difficult one in a terrorism
5 case, sort of promoting respect for the law and making sure
6 that the sentence reflects community values. There has been
7 some work, the court may be familiar with, by Judge Quinn in
8 the Northern District of Ohio and sort of assessing whether the
9 guidelines accurately reflect community values with respect to
10 sentencing. He has gone, and he has in several cases, polled
11 the jurors in trials -- this is in the Northern district of
12 Ohio -- polled the jurors after trials to get their sense of
13 what they believed an adequate sentence would be.

14 There is a published piece in the Harvard Review of
15 Law and Public Policy of 2010 that I had not included but I was
16 thinking about as I was preparing for the hearing today. It
17 doesn't include a discussion of terrorism cases, and I
18 understand that might make some of the responses
19 distinguishable, somewhat distinguishable. But in his work,
20 what he found in cases, even cases involving child pornography,
21 which I think yield some of the same kind of community
22 reaction, that the sentencing guidelines consistently
23 over-punished, substantially over-punished, frequently even at
24 the low end six times more than what jurors would recommend.

25 I say this because I imagine that a court must always

ICIsELG2

1 be thinking about will this sentence reflect the values of the
2 community in which it is imposed. again, it sort of goes back
3 to the guidelines and this 292-month representation from the
4 government or request from the government. Is that just
5 punishment. Does that promote public respect for the law.

6 It is difficult for me to say not to have tried this
7 case. Certainly, there was no polling of the jurors
8 afterwards. I'm not sure the court would necessarily even take
9 into account their consideration in fashioning a sentence. But
10 if in cases of child pornography jurors, the media and juror
11 response as to an appropriate sentence or the guidelines are
12 six times higher than the median juror response, I would not be
13 surprised if that were true as well in the case of a terrorism
14 sentence.

15 I know I cited to the Deacons guideline article
16 concerning the terrorism guideline. The government says
17 repeatedly this is in the heartland of the terrorism guideline,
18 but that terrorism guideline is not grounded in anything. It
19 is a number that is a draconian number. It is a number --
20 there is a wrecking ball. It does not satisfy the statutory
21 sentencing concerns.

22 We ask the court to consider our request for a
23 substantial downward variance in this case.

24 THE COURT: Thank you.

25 Actually, I do have a question for the government

ICISLG2

1 concerning two factors that are in Section 3553(a).

2 One is sentencing similarly situated defendants.
3 Ms. Benett spoke about facilitator cases against direct actor
4 cases. That is one factor that I want your insight on.

5 The other one is in terms of deterrence, personal
6 deterrence and specific and general deterrence. In their
7 papers, the defense has put in the report of Dr. First, and he
8 makes the observation, which I don't think that I need an
9 expert to opine on, that Mr. el Gammal is not the typical
10 terrorism defendant.

11 As the parties may be aware, once upon a time, I tried
12 a terrorism case in this courthouse, or across the street, so I
13 became aware of the expert opinion in this field and how one
14 becomes radicalized and what those folks who become radicalized
15 believe and what they continue to do.

16 Certainly, I think the government would agree that
17 Mr. el Gammal doesn't fit that mold and, therefore, what should
18 I do with those two data points?

19 MR. QUIGLEY: Thank you, your Honor.

20 I think in terms of breaking up cases into buckets of
21 facilitator and direct actor, I think this is clearly a
22 facilitator case. I think it is different. It is different in
23 some ways, more serious than sort of the direct actor cases
24 that Ms. Benett sites, and it is certainly different than the
25 Natsheh and Khan cases that she cites.

ICIsELG2

1 I mean, I think the three cases, one from the Second
2 Circuit and one from the Eastern District and one from the
3 District of New Jersey. What came from the Second Circuit,
4 from the Eastern District and from New Jersey, I think it is
5 worth noting that in all those cases, the court imposed a
6 statutory maximum sentence that it was allowed to impose;
7 15 years in the Eastern District case and the District of
8 New Jersey case and 20 years in the Second Circuit case.

9 So I'm not sure how useful a comparator it is to say,
10 oh, the court only imposed half or a third of the sentence or
11 three quarters of the sentence that the government is asking
12 the court to impose here, when the court imposed in those cases
13 the maximum it could.

14 I think also with respect to many of those direct
15 actor cases, one fact that distinguishes Mr. Gammal, this case
16 certainly, is that there was no involvement of law enforcement
17 during the course of the investigation. Certainly while sting
18 cases have a place and they serve an important preventative or
19 important way to prevent terrorist attacks, this wasn't a case
20 anyone contacted the direction of law enforcement, induced
21 Mr. El Gammal to arguably help send el-Goarany overseas. I
22 think that distinguishes many of the direct support cases.

23 I think finally I would say, with respect to your last
24 question about how Mr. Gammal does not fit the profile of a
25 typical terrorism defendant, if there is such a thing, also in

ICIsELG2

1 response to Ms. Bennett's point about the Khan and Natsheh
2 cases, I think both those things go together, and the
3 defendants in those two cases were, in many ways,
4 quote-unquote, typical terrorism defendants. They were young
5 men who had been radicalized. I think the defendant in Khan
6 was 20 years old. He attempted to travel to ISIS with a
7 friend. The defendant in Natsheh was in his 20s. I believe
8 also the court said he was a troubled young man battling
9 depression and alienation. He was not appeared to have been
10 in any direct effort to recruit others. There wasn't any
11 training.

12 These were young men who, like many terrorism
13 defendants, were sucked in by the ISIS propaganda machine, and
14 that is not what happened with respect to the defendant in this
15 case. The fact that it was distinguishable from those cases is
16 an aggravating factor here.

17 The defendant was 42 years old at the time of the
18 offense conduct. Unlike Samy el-Goarany, he was well-traveled.
19 He spoke Arabic. He knew people in the Middle East. He was a
20 vocal supporter of ISIS. Samy el-Goarany, the evidence is
21 there was some discussion about how el-Goarany was radicalized
22 when he met the defendant.

23 We know from the documentary evidence at trial that,
24 as Ms. Tekeei said, when Samy el-Goarany learned the defendant
25 had posted -- made posts supporting ISIS, he contacted the

ICISLG2

1 defendant and they discussed ISIS. That discussion went on for
2 months and months at key junctures during Samy el-Goarany's
3 trip to/from Queens to Syria. The defendant was the person he
4 reached out to.

5 The defendant was somebody who, unlike el-Goarany,
6 spoke Arabic, knew people in the Middle East, had the
7 connections, had the benefit of having been around the square
8 during the massacre over there. He was somebody who could have
9 had a positive influence on Samy el-Goarany, a man almost half
10 his age. He didn't. To the contrary, he facilitated the
11 travel over, where he ultimately was killed.

12 THE COURT: Thank you.

13 Ms. Benett, I don't know whether you want to respond?

14 MS. BENETT: Well, only with respect to the age issue.
15 I mean, it is a little bit of a heads I win, tails you lose
16 with the government. I think if he is young, he is more likely
17 to recidivate, and he is a typical radical terrorism defendant
18 profile. If he is old, he is unusual and should be -- he
19 doesn't have the same kind of excuse of youthful naivety that
20 Samy el-Goarany has. The fact of Mr. el-Goarany's age is
21 something that should be a mitigating factor here. All the
22 evidence suggests that the older he is, the less likely he is
23 to engage in offense conduct again. I think the question
24 really should be with respect to the radicalization, is he
25 going to reoffend.

ICIsELG2

1 We have empirical evidence of his last three and a
2 half years. It's been a combination with his age, his work
3 history, the support network that is ready to welcome him upon
4 his release, which will, with every additional period of
5 incarceration, that opportunity for successful reintegration
6 will diminish somewhat and make it that much harder for him to
7 reintegrate.

8 So I think those are relevant factors when figuring
9 out what is the minimum necessary sentence here.

10 THE COURT: Mr. Gammal, you have an absolute right to
11 address the court before I impose sentence. Is there anything
12 that you wanted me to know?

13 THE DEFENDANT: I want to say that I'm a proud
14 American. I love this country. I was never radical all my
15 life from -- from the time I came to this country. I practice
16 my life. I was not radical at all or have any radical
17 behaviors. There is no neighbors that ever complained about
18 that, coworkers, places I worked for.

19 All my life until my arrest, my wife, my
20 mother-in-law, my mom, the way I lived my life here is just
21 regular providing citizen. I love this country. I love
22 everything about it.

23 I also want to address to my family and thank the
24 court for allowing my family to be here today. And I want to
25 let them know that I love them and I am very sorry for the pain

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1 that I inflicted on them.

2 I want to also -- the court knows that I have a lot
3 of work ahead of me to get my life back together and help my
4 family. I affected them so much on so many levels. I never --
5 I never intended this pain to happen to my family.

6 I love this country. We are in the months of
7 December. I need forgiveness and mercy, and I just hope my --
8 everybody here can forgive me.

9 And Merry Christmas. That's it. Thank you.

10 THE COURT: Thank you.

11 In deciding what sentence to impose in addition to the
12 sentencing guidelines, I have considered all of the factors set
13 forth in Section 3553(a) of Title 18 of the United States Code,
14 including, as most relevant to Mr. Gammal's case, the nature
15 and circumstances of the offense and the history and
16 characteristics of the defendant, I have considered the need
17 for the sentence imposed to reflect the seriousness of the
18 offense, to promote respect for the law, to provide a just
19 punishment for the offense, afford adequate deterrence to
20 criminal conduct, to protect the public from further crimes of
21 the defendant, and to provide him with needed educational and
22 vocational training and medical care or other correctional
23 treatment in the most effective manner. I have also considered
24 the need to avoid unwarranted sentence disparities among
25 similarly situated defendants and the need to provide

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1 restitution for any victims of the offense.

2 Having considered all of these factors, it is my
3 intention to impose a total sentence of 144 months, that will
4 be followed by three years of supervised release on each count,
5 each to serve concurrently, and I will not impose a fine, as I
6 find that Mr. Gammal is not able to pay a fine, and the
7 mandatory special amendment of \$400.

8 I find that this sentence is sufficient but not
9 greater than necessary to comply with the purposes of
10 sentencing for the following reasons: I think there is a
11 fairly universal agreement in this case that this is a very
12 important case. It is a terrorism case. My understanding is
13 that this was the first ISIL-related prosecution, or trial at
14 least, in the Southern District of New York. It is a case that
15 is a very important one for the government and for the defense,
16 as it was very important for the court.

17 The consequences of Mr. Gammal's conduct were tragic
18 indeed. A young man, who was fairly young, who had a very
19 strong family, committed parents here in the United States, was
20 able, with the help of Mr. Gammal, to travel to Syria and work
21 with an organization that this country has determined to be a
22 designated terrorist organization, and he agreed to take arms
23 in connection with that organization and against this country
24 and other perceived enemies of the state.

25 I think I take the point of the defense that -- and it

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1 was a point that was made at trial -- that Mr. el-Goarany was
2 very set on traveling to Syria, and whether or not he would
3 have been successful is another question, but he certainly was
4 going to try to go there. There was no question in my mind
5 about that, and therefore in my mind, the question was, well,
6 how much did Mr. Gammal attribute. Clearly he attributed
7 enough to make him guilty of the offenses to which he was
8 convicted.

9 But that fact, I think, is a mitigating factor, and I
10 disagree with the government in that regard. I do think it is
11 a mitigating factor that he was able to make a connection with
12 this young man, not because he was intent on sending him to
13 Syria, but because they had similar points of view, similar
14 world views, and he agreed to help him find his way into Syria.

15 Obviously it is serious because of the matter of
16 public policy. This government has been engaged in a very
17 costly, very lengthy war against terrorism since serving the
18 almost entirety of this century, and for that reason, these
19 types of cases have to be taken very seriously.

20 It is uncertain why the guidelines are as high as they
21 are for the typical offense, and the guidelines for Mr. Gammal
22 certainly were very, very high. While I do not go as far as
23 Ms. Benett goes to say that number comes from nothing, and it
24 means nothing, I think it does reflect the considered thought
25 of our legislators that these crimes be considered as seriously

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1 as possible.

2 While I do have to deal with those laws, I also have
3 to deal with the other statutes and provisions of the
4 sentencing guidelines that require me to look at the person
5 that is standing before me, and the person that is standing
6 before me is a 48-year-old man who was, as far as anyone knows,
7 as far as I have been told, prior to six years ago, was not
8 involved in any of this type of activity. He was entering
9 middle age. He was in and on-again-off-again relationship with
10 his American wife and his American mother-in-law, and was a
11 used car salesman in Phoenix, Arizona.

12 How he got involved in this is still -- I mean, I was
13 told some of the outlines of how he did it, but why he agreed
14 to take the step to commit these very serious felonies as
15 someone, certainly the case as Dr. First indicated, and based
16 on my limited experience, that he is not the typical terrorism
17 suspect. He is not. This is just, to use my parlance now, no
18 one else's. The type of true believer that I have seen in
19 other cases in this court that I have dealt with as a member of
20 the CJA panel in this court.

21 Based on my understanding of or my recollection of the
22 expert testimony concerning terrorism defendants in several
23 courts in the United States, that the process of radicalization
24 sometimes begins in prison. You have otherwise not
25 particularly religious young men that go to prison and are

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1 radicalized there when they meet other young, more religiously
2 zealot Muslim men.

3 Mr. Gammal, I don't know that he ever became
4 radicalized, if that is the appropriate term. He was very
5 committed, but he was very interested in the political
6 situation in Egypt, and he appeared to become very interested
7 in the exploits of what they were doing in the Middle East.
8 But he came to it at a very late stage, and based on what he
9 has been doing since his arrest also is very unusual. He has
10 emerged himself in the life, as much as he has been allowed to,
11 of the MCC. He has been looking for work. He has been looking
12 to help his fellow inmates. I've not been told that they've
13 been limited to Muslim inmates, so that is very different from
14 the type of defendants, terrorism defendants, that we are used
15 to dealing with.

16 Because of his age, I think -- and, again, I disagree
17 with the government in this regard -- it is much less likely
18 that he is going to recidivate. That, and because of the
19 relatively lesser extent of radicalization than others, I do
20 not believe that after he is released from prison, Mr. Gammal
21 will commit another crime, much less commit a crime of
22 terrorism.

23 So for all of those reasons, while there is a very
24 serious sentence and it requires a serious sentence, I believe
25 12 years for him is a serious sentence. I do believe that it

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1 adequately reflects his activities, his involvement in getting
2 this young man to Syria, where he met an unfortunate death. I
3 do believe that this crime is certainly the minimum sentence
4 that can be imposed that would adequately reflect the values
5 that are in Title 18, United States Code, Section 3553(a).

6 With all that, other than what has already been said,
7 is there any reason why I should not impose the sentence as I
8 have indicated?

9 MR. QUIGLEY: Judge, just in imposing a sentence, I
10 think I understand it is 144 months concurrent on all counts.
11 I think the sentence should reflect that the sentence on
12 Count Four is 60 months, which is a statutory maximum.

13 THE COURT: Exactly.

14 So ten years on Count Three, 144 months on Counts One
15 and Two, and 60 months on Count Four.

16 MR. QUIGLEY: Thank you, your Honor.

17 THE COURT: It is the judgment of the court that he be
18 sentenced to 144 months on Counts One and Two, 120 months on
19 Count Three, and 60 months on Count Four, all to run
20 concurrently. That will be followed by three years of
21 supervised release on each count.

22 The standard conditions of supervised release 1
23 through 13 shall apply, and in addition, special mandatory
24 conditions shall apply, which are as follows: The mandatory
25 conditions that he not commit another federal, state, or local

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1 crime, that he not unlawfully possess a controlled substance,
2 that he refrain from unlawful use of a controlled substance,
3 and submit to one drug test within 15 days of release from
4 imprisonment, and at least two periodic drug tests thereafter
5 as determined by probation. He must pay the special assessment
6 imposed in accordance with 18 U.S.C. Section 3013. I will not
7 impose a fine, as I have indicated.

8 The special conditions is that he submit his person,
9 residence, place of business, vehicle, and any property or
10 electronic device under his control to a search on the basis
11 that the probation officer has reasonable suspicion that
12 contraband or evidence of a violation of the conditions may be
13 found. The search must be conducted in a reasonable time and
14 in a reasonable manner.

15 What are we doing on forfeiture?

16 MS. TEKEEI: We are not seeking forfeiture,
17 your Honor.

18 THE COURT: As indicated, he must pay the special
19 assessment, mandatory special assessment of \$400, which shall
20 be due immediately.

21 Are there any open counts?

22 MS. TEKEEI: No, your Honor.

23 THE COURT: That constitutes the sentence of the
24 court.

25 Mr. Gammal, you have a right to appeal this sentence.

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1 Counsel, you'll assure me, Ms. Benett and Mr. DuBoulay, will
2 you assure me you will thoroughly and promptly discuss with
3 Mr. Gammal his appellate rights?

4 MS. BENETT: Yes.

5 Before we adjourn, I would ask the court to put a
6 representation on the judgment and commitment order for the
7 residential drug abuse program. As the court knows from the
8 presentence investigation report, at the time Mr. Gammal
9 entered the Bureau of Prisons system, he had a dependence on
10 opioid drugs, and he had been initially prescribed and then was
11 using without a prescription.

12 I would ask for a recommendation that he receive the
13 RDAP treatment. I would ask that the court recommend a
14 designation, but I ask the court to consider putting in a
15 recommendation for designation to the Terminal Island FCI, in
16 Phoenix, or FCI Stafford facilities. I know that ultimately
17 the decision is up to the Bureau of Prisons, but I have had
18 other cases where the J&C actually reflects a recommendation
19 for a specific facility, not just a geographic recommendation.

20 THE COURT: Which facility was that?

21 MS. BENETT: They are all on the West Coast. FCI
22 Phoenix, which obviously is near his family; FCI Stafford,
23 which is also in Arizona; and then the BOP Terminal Island
24 facility which is in Southern California.

25 THE COURT: Say that last one.

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1 MS. BENETT: Terminal Island.

2 THE COURT: Terminal Island?

3 MS. BENETT: Terminal Island, which is in Southern
4 California.

5 THE COURT: Any objection to the RDAP program?

6 MS. TEKEEI: No, your Honor.

7 THE COURT: I will make both of those recommendations.
8 Anything further, Ms. Bennett?

9 MS. BENETT: No. Thank you, your Honor.

10 THE COURT: In that event, that is the sentence of the
11 court, the judgment of the court, unless there is anything
12 else, Ms. Tekeei?

13 MS. TEKEEI: No. Thank you, your Honor.

14 THE COURT: We are adjourned.

15 Mr. Gammal, good luck to you, sir.

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